SUPREME COURT, U. S.
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IN THE
SUPREME COURT
OF THE
UNITED STATES

OCTOBER TERM, 1975

NO. 74-1465

RICHARD F. (DICK) HAYES,

Appellant,

THE STATE OF FLORIDA, et al.,

Appellees.

ON APPEAL FROM THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

MOTION TO DISMISS OR AFFIRM

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The Appellees Reubin O'D. Askew, Robert L. Shevin, Dorothy Glisson and the State Canvassing Commission of the State of Florida move the Court to dismiss the appeal herein or, in the alternative, to affirm the Judgment of the United States District Court for the Southern District of Florida on the ground that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

I.

THE STATE STATUTES INVOLVED AND THE NATURE OF THE CASE

A. The Statutes

This appeal raises the question of the validity of certain Florida Statutes regulating the election of public officers, to wit, Sections 100.061, 101.021 and 101.151, Florida Statutes.

Section 100.061 provides for a first primary electicn for the nomination of candidates of political parties. Pursuant to that statute, the candidate receiving the majority of the votes cast in each contest in the primary election is declared nominated for such office. Section 101.021 provides that a qualified elector shall vote the primary election ballot of the political party designated in his registration and no other political party's ballot. Section 101.151 provides that the names of unopposed candidates shall not appear on the general election ballot unless a write-in candidate has qualified. That statute further states that an unopposed candidate shall be deemed to have voted for himself.

B. The Proceedings Below

The Appellant, Richard F. Hayes, a registered Republican voter in Dade County (Miami), Florida was precluded under Florida Statutes 101.021 from

voting in the September 10, 1974, Democratic Party primary election. Five candidates nominated in that primary election were unopposed in the general election. Consequently, pursuant to Florida Statutes 101.151, the names of those five candidates were omitted from the general election ballot and the candidates were declared elected.

On September 24, 1974, Appellant filed suit in the United States District Court for the Southern District of Florida against the several state officials charged with the duty of carrying out the provisions of the Florida Elections Code. He sought to declare unconstitutional and enjoin the provisions of that Code insofar as they permitted an unopposed candidate who had had opposition in his party primary to take office without his name ever having appeared, together with the name or names of all candidates opposing him in his party primary, on the general election ballot.

A hearing on Appellant's motion for preliminary injunction requesting the aforementioned relief was continued because of the state's objection to an expedited briefing schedule. The general election date passed, and after several amendments to the original complaint, Hayes moved for summary judgment requesting that the three-judge court declare the statutes to be unconstitutional, order new elections in the races in which candidates were unopposed and insure that the challenged statutes not be enforced in the future. Agreeing that no dispute existed as to the facts,

the Defendants filed cross motions for summary judgment.

After argument, the court below granted the Defendants' motion for summary judgment and entered a Final Judgment dismissing the action.

II.

ARGUMENT

The District Court's decision is clearly correct. Their short opinion reflects the court's perception of Hayes' claims as totally specious and without merit.

Hayes' complaint arises out of his being prohibited from voting in the Democratic Party primary election in the Fall of 1974 because he was registered as a Republican. He contends that denying him the right to vote in the Democratic primary was equivalent to total disenfranchisement in the five races in which Democratic nominees were unopposed in the general election. Further, he argues in that the alleged "disenfranchisement" could have been cured only by changing his registration from Republican to Democrat, his freedom to associate with the party of his choice has been infringed upon.

While it is true that Hayes never cast a vote in the races for the five offices in question, it was not the statutory prohibition against his voting in the Democratic Party primary which caused this result. The reason he never

had the opportunity to cast a vote in those races was that there was no contest for those offices. Thus, if Hayes was disenfranchised at all it was only in the sense that every elector was disenfranchised by the existence of unopposed candidates.

The District Court correctly recognized that Hayes and other Republicans had no ground upon which to complain of the so-called "disenfranchisement" resulting from the existence of an unopposed candidate because the very situation about which they complained was caused by their own failure to exercise their equal rights under the challenged statutes. Had the Republicans nominated candidates for each of the five offices in question, there would have been contested races in the general election, thus creating the opportunity for all electors, including Republicans, to vote in the general election for those offices.

The same reasoning applies to Hayes' complaint against the statute which prohibited him from voting in the Democratic primary. The Democratic Party primary is the process by which that party nominates its candidates for various state and local offices. Republicans have an equal right to nominate candidates for the same offices. The laws granting the right to the Democratic Party to nominate its candidates in a closed primary do not become unconstitutional simply because the members of the Republican Party fail to exercise their equal rights to nominate candidates in a closed primary.

In support of this latter principle, the District Court correctly cited Rosario v. Rockefeller, 410 U.S. 752 (1973). In that case, the Plaintiffs sought to hold unconstitutional a New York statute which closed registration in a political party 30 days before a general election. Registration prior to the closing date was necessary in order to be eligible to vote in the next subsequent party primary. Because both plaintiffs had been eligible to register before the date for closing registration but had failed to exercise their right to register, this Court held that the challenged statute did not unconstitutionally deny them of their rights to vote in the subsequent presidential primary or to associate with the political party of their choice. Similarly, in the case at bar, because members of the Republican Party fail to exercise their right to nominate candidates for certain offices and thus create contested races in the general election, the District Court was correct in holding that the Florida statute prohibiting registered Republicans from participating in the Democrats' nominating process does not deny them of their rights to vote in the general election of those officers or to associate with the party of their choice.

Finally, the District Court's decision is clearly correct because to have granted Hayes the relief he requested would have been to deny equal protection of the law to the members of the Democratic Party. Hayes and other Republicans possessed the right

to nominate one candidate for each of the five offices here in question. This right to nominate was never denied them by operation of law. They merely surrendered their right by failing to exercise it. Hayes now submits that members of the Democratic Party should be, by force of law, denied their right to nominate a single candidate for each of the five offices simply because the Republicans voluntarily discarded their equivalent right. Clearly, it is a denial of equal protection of the law to force the Democrats to surrender a right which the Republicans were not forced to surrender.

CONCLUSION

Because the decision of the District Court is clearly correct and, hence, the questions presented are so unsubstantial as not to need further argument, the Appellees respectfully request the Court to dismiss the appeal herein or, in the alternative, affirm the Judgment of the United States District Court for the Southern District of Florida.

Respectfully submitted,

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